LIBRARY
SUPREME COURT, U. S.

JUL 27 1970
E. ROBERT SEAVER, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1970

No. 458

FIFTH DISTRICT REPUBLICAN COMMITTEE,
Petitioner

vs.

MICHIGAN EMPLOYMENT SECURITY COMMISSION

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MICHIGAN

PAUL A. WARD
Attorney for Petitioner
Business Address:
865 Union Bank Building
Grand Rapids, Michigan 49502

Of Counsel:

RUSSELL & WARD
Business Address:
865 Union Bank Building
Grand Rapids, Michigan 49502

AMERICAN BRIEF AND RECORD COMPANY, FIFTY MARKET AVENUE, N.W.,
GRAND RAPIDS, MICHIGAN 49502 — PHONE GL 8-5326

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Constitutions and Statutes involved	2
Statement	3
Reasons for granting the writ	6
Conclusion	10
Appendix A	1a-14a
Opinion of the Circuit Court	1a-8a
Opinion of the Appellate Court	8a-14a
Appendix B — Statutory provisions, etc.	15a-23a

CITATIONS

Cases:

Katz v. Fitzgerald, 52 Cal. 433, 93 P. 112, (1907)	9
In re Batter, 257 Appellate Division 546, 14 N.Y.S. 2d 42) (1939)	6
Pickett v. Unemployment Compensation Board, 110 A 2d 863 (Pa Sup Ct) (1955)	6
Rice v. Elmore, 165 F. 2d 387, 68 S. Ct. 905, 333 U.S. 875 (1947)	10
Smith v. Allwright, 321 U.S. 649, 64 S. Ct. 757 (1944)	2, 7, 8, 9, 10

CITATIONS (Continued)

	Page
State Bar of Michigan v. Lansing, 361 Mich. 185, 105 N.W. 2d 131 (1960)	6, 7
State ex. rel. Butts v. Marion Circuit Court, 255 Inc. 7, 72 N.E. 2d 225, 70 A.L.R. 187 (1947)	9
Constitution and Statutes:	
The 14th Amendment of the United States Constitution	2
Article IV, Section 6 of the Michigan Constitution	2, 14
Apportionment of Board of Supervisors, Act No. 261 of the Public Acts of 1966, M.C.L.A. 46.401, M.S.A. 4.359 (1)	2, 14
Michigan Employment Security Act, Act No. 1 of Public Acts of 1936, Ex. Sess., M.C.L.A. 421.38, 421.40, 421.41, 421.42, M.S.A. 17.538, 17.540, 17.541, 17.542	3, 6
Michigan election law Act No. 116 of the Public Acts of 1954, M.C.L.A. 168.600, M.S.A. 6.1600	3
28 U.S.C. 1257 (3)	3
42 U.S.C. 1983	3

IN THE SUPREME COURT OF THE UNITED STATES

No. --------

OCTOBER TERM, 1969

FIFTH DISTRICT REPUBLICAN COMMITTEE.

Petitioner

vs.

MICHIGAN EMPLOYMENT SECURITY COMMISSION

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MICHIGAN

Russell and Ward, on behalf of the Fifth District Republican Committee, prays that a writ of certionari issue to review the judgment of the Court of Appeals of the State of Michigan, upon which the Michigan State Supreme Court has denied leave to appeal.

OPINIONS BELOW

The unreported opinion of the Circuit Court for the County of Kent entered May 6, 1968 (File No. 5782). The opinion of the Court of Appeals of Michigan, Division 3 entered October 30, 1969, is reported at 19 Mich. App. 449, 172 N. W. 2d 825, Appendix A.

JURISDICTION

The judgment of the Court of Appeals of the State of Michigan was entered on October 2, 1969, (Appendix A).

Petition for leave to appeal to the Supreme Court of the State of Michigan was denied on January 21, 1970. The jurisdiction of the Court is involved under 28 USC 1257 (3).

QUESTIONS PRESENTED

I. Whether the Michigan Court of Appeals' refusal to grant the Fifth District Republican petition for tax exemption under the Michigan Employment Securities Act denies the Committee equal protection under the law in violation of the 14th Amendment to the U. S. Constitution.

II. Whether a statutorily designated political party district committee is an agency of the State under Federal Constitutional law as pronounced in *Smith v. Allwright* 321 U.S. 649 (1944).

CONSTITUTIONS AND STATUTES INVOLVED

The following statutory provisions are set forth in Appendix B, *infra*, pp. 15a-23a:

The 14th Amendment of the United States Constitution

Article IV, Section 6 of the Michigan Constitution

Apportionment of Board of Supervisors, Act No. 261 of the Public Acts of 1966, M.C.L.A. 46.401 et. seq., M.S.A. 4.359 (1)

Michigan election law Act No. 116 of the Public Acts of 1954, M.C.L.A. 168.600 et. seq., M.S.A. 6.1600 et. seq.

Michigan employment security act, Act No. 1 of Public Acts of 1936, Ex. Sess., M.C.L.A. 421.1 et. seq., M.S.A. 17.501 et. seq.

28 U.S.C. 1257 (3)

42 U.S.C. 1983

STATEMENT

The Fifth District Republican Committee is the legally constituted Republican District Committee for the Fifth Congressional District of this state as provided for in Section 600 of the Michigan Election Law.

Said Fifth District Republican Committee had at the time of institution of action by the Michigan Employment Security Commission, several employees who were paid a salary.

Although the Michigan Employment Security Act has been in effect for nearly thirty (30) years, there has been no assessment of employment security taxes against any statutory political committee until June 3, 1966, when an examiner of the Michigan Employment Security determined that the Fifth District Republican Committee was an organization covered by Section 41 (b) of the Michigan Employment Security Act, and on July 3, 1966, a redetermination affirming the prior determination was made, and that on July 20, 1966, the Fifth District Republican Committee appealed the determination and a hearing was held on October 11, 1966, before a referee. The decision of the referee was to reaffirm the redetermination, and on December 13, 1966, appeal was made to the Appeal Board of the Michigan Employment Security Commission which again reaffirmed the decision of the referee.

The salaried employees of the Fifth District Republican Committee perform work for said Committee in connection with its statutory function.

The State of Michigan, under its Election Law, being Public Act 116 of the Public Acts of 1954, as amended, integrates the political parties into the electoral process

in this state. The statute referred to makes provisions for nomination of candidates for state offices at state party conventions, prescribed the manner of holding congressional district and county conventions for the election of delegates to state and national conventions, gives direction to the State Central Committee of the party as to the holding of these conventions, makes provision for the certification of nomination of candidates by the state convention so that their names may appear on the fall general election ballot, requires the serving of a call for the state convention with the Secretary of the State of Michigan, provides a method of apportionment of delegates to state conventions by the county convention, provides a method of election of a State Central Committee and the selection of a chairman of the State Central Committee and its other officers, and the Statute, also covers procedures for calling state conventions, filling vacancies after their nomination, details the functioning of various committees as well as the procedure whereby candidates have their names placed on the ballot at a primary election, provides the election of party precinct delegates to the county convention on a state ballot and provides for certification of such election by the county clerk to the chairman of the county committee, provides that delegates may not act by proxy, provides for the selection of delegates to a national political convention, the selection of national committee members and the choosing of presidential electors by district party caucases.

The statutes and the Constitution of the State of Michigan otherwise integrate political parties into the elective structure. The constitution provides a commission of legislative apportionment selected by the state organizations of each of the two major political parties and makes the officers of political parties an integral part of the county apportionment commissions.

On June 17, 1966, a letter was received from the committee protesting the Commission's determination and requesting a review and redetermination.

A redetermination affirming the determination was mailed by the Commission on July 13, 1966. The committee then

appealed the Commission's redetermination to the referee by a letter received July 20, 1966.

As a result of the referee hearing held on November 2, 1966, the referee mailed a decision on November 29, 1966, affirming the redetermination of the Commission and holding the services of the committee's employees to be in employment under Section 42 of the Act. The committee then filed a timely request for an appeal to the Michigan Employment Security Appeal Board. The Appeal Board mailed a pro forma affirmation of the referee decision on March 13, 1967. A claim of appeal was then filed by the committee in this Court.

On March 27, 1967, a Claim of Appeal from the decision of the Appeal Board of the Michigan Employment Security Commission was filed in the Circuit Court for the County of Kent, and a hearing was had before the Circuit Court for the County of Kent on May 3, 1968. On May 7, 1968, an Opinion of the Court reversing the Appeal Board was filed in said Court and on June 3, 1968, the Michigan Employment Security Commission filed a Claim of Appeal in the Michigan Court of Appeals. Briefs were filed and the matter was heard by the Court of Appeals before a panel consisting of J. H. Gillis, Presiding Judge and R. B. Burns and Brennan, Judges. The matter was argued orally on June 3, 1969, and on October 2, 1969, the Court of Appeals rendered its Opinion speaking through J. H. Gillis, reversing the Circuit Court.

On October 22, 1969, Application for Leave to Appeal to the Supreme Court of Michigan was filed. On January 21, 1970, the Court of Appeals, per curiam, denied the Leave to Appeal stating that the "Appellant has failed to persuade the Court that it has a meritorious basis for appeal or that the decision of the Court of Appeals was clearly erroneous."

On February 9, 1970, a Motion for Reconsideration of Order Denying Appeal was filed and on April 30, 1970, the Supreme Court again, per curiam, denied the motion.

REASONS FOR GRANTING THE WRIT

The decision of the Michigan Court of Appeals holding that the statutorily created 5th District Republican Committee did not qualify as an agency of the State is an inconsistent, arbitrary, and discriminatory application of the law and denies to the plaintiff its state and federally guaranteed constitutional right to equal protection before the law.

The State of Michigan has exempted from the Michigan Employment Security Act services performed in the employ of that state, or any political subdivision thereof. (M.C.L.A. Sec. 421.42 (7)(a)).

Although Section 42 (7)(a) is designated to exempt governmental instrumentalities from assessment under the Michigan Unemployment Compensation Act, the test to be applied in resolving an issue of state agency for purposes of exemption are not all together clear. Several cases, however, have construed the indicia of state agencies, for purposes of exemption. In *State Bar of Michigan v. Lansing*, 361 Mich. 185, 105 N. W. 2d 131 (1960), it was held that properties of the State Bar were exempt from taxation. The decision rested upon the grounds that the State Bar was for purposes of taxation an agency of the state and therefore exempt under general law. It was noted that the State Bar was specifically created by legislative enactment. Other courts have also emphasized creation by legislative enactment of the instrumentality claiming exemption. See *In re Batter*, 257 Appellate Division 546 (14 N.Y.S. 2d 42) (1939); *Pickett v. Unemployment Compensation Board*, 110 A 2d 863 (Pa Sup Ct) (1955).

The degree of control exercised by the state over the organization claiming exemption is also relevant. In resolving the tax status of the Michigan bar, the Court noted:

> "[I]ntegrated bars have the common characteristic of being organized by the State or under the direction of the State, and of being under its direct control, and in effect they are governmental bodies."

State Bar of Michigan v. Lansing, supra, at 197, quoting *Lathrop v. Donohue*, 10 Wis. 2d 230; (902 NW 2d 404) (1960) (Emphasis supplied.)

The 5th District Republican Committee is a creature of the legislature in that section 168.600 of the Michigan Compiled Laws Annotated[1] requires:

> "that at the 1964 fall congressional district convention provided for in this act for congressional districts, the majority of the electors of which, reside in counties having a population over one-million, and at a caucus of each other congressional district held at the time of the 1964 fall state convention, there shall also be elected for each political party a congressional district chairman, vice-chairman of the opposite sex from the chairman, secretary, treasurer and *committee of fifteen members to serve for two year terms or until their successors are duly elected and qualified* * * * *" (Emphasis supplied.)

It is the petitioner's contention that it is an agency of the state under the criteria developed by the highest court of the state in *State Bar Association v. City of Lansing* i.e. it was created by the legislature, regulated by the legislature, and provides a governmental service in the election process, that the state has refused to allow exemption from the State Employment Securities Act to petitioner while allowing said exemption to other governmental agencies of like structure. This act amounts to arbitrary, capricious, and discriminatory application of the law and denies petitioner the rights of equal protection under the law guaranteed by section 1 of the Fourteenth Amendment to the United States Constitution.

The decision of the Michigan Court of Appeals is squarely in conflict with the United States Supreme Court decision in *Smith v. Allwright*, 321 U. S. 649, 64 S. Ct. 757, (1944).

---

[1] See footnote immediately following the Conclusion at pages 11 through 14.

In *Smith v. Allwright*, *supra*, a claim for damages in the sum of Five Thousand ($5,000.00) Dollars on the part of petitioner, a Negro citizen of the 48th precinct of Harris County, Texas, for the refusal of respondents, election and associate election judges respectively of that precinct, to give petitioner a ballot or to permit him to cast a ballot in the primary election of July 27, 1940, for the nomination of Democratic candidates for the United States Senate, House of Representatives, Governor and other high State offices. The refusal is alleged to have been solely because of the race and color of the proposed voter.

The actions of the respondents were said to violate paragraph 31 and 43 of title 8 of the United States Code in that petitioner was deprived of rights secured by paragraphs 2 and 4 of Article 1 and the Fourteenth, Fifteenth and Seventeenth Amendments to the United States Constitution. The suit was filed in the District Court of the United States for the Southern District of Texas, and upon denial of relief sought, was appealed to the Circuit Court of Appeals and from there was taken by certiorari to the Supreme Court.

Under the Constitution of Texas and Texas statutes, the Democratic Party was required to hold the primary which was the occasion of the alleged wrong to the petitioner. On page 655, footnote number 6 is a digest of the election laws of the State of Texas, as they provide for the participation of political parties in the committees, conventions, primary, state and national elections.

The Court stated in the *Smith* case the privilege of membership in a political party may be as the Court said in *Grovey v. Townsend*, 295 U.S. 45, no concern of the state. But when, as here, the privilege is also the essential qualification for voting in the primary election to select nominees for a general election, the state makes the action of the party the action of the state. The Court went on to hold that where a state legislature entrusts to a political party a selection of candidates for political office at a primary election a political party in making those selections is an agency of the state and as state agent a political party is constitutionally precluded from excluding Negroes from voting in primary elections.

In the present case, the State of Michigan election laws is strikingly similar to that of the State of Texas (see Appendix B).

Applying the language of the *Allwright* case to the Fifth District Republican Committee, as it is constituted and functions under the Michigan election law, as a part of the machinery of choosing state and national officers and as a part of the constitutional machinery for apportionment of the State Legislature, it is an agency and instrumentality of the State of Michigan, exercising the sovereign power of the state so that the exclusion extended to a state agency under the Michigan Employment Security Act applies also to the petitioner.

The holding of the Court of Appeals of the State of Michigan that a political party is not an arm or agency of the state is in direct conflict with the pronouncement of the United States Supreme Court in *Smith v. Allwright, supra,* and therefore must fall under Article VI of the United States Constitution.

Since the Court decision in *Smith v. Allwright*, the various state high courts have attempted to apply that law to political party activities. The Indiana Supreme Court in *State ex. rel. Butts v. Marion Circuit Court*, 225 Ind. 7, 72 N.E. 2d 225, said that:

> "Political parties through conventions and primary elections, regulated by state statute, select our candidates for the most important public offices and in so doing are acting as state agencies and not as voluntary associations * * *.
>
> In exercising their political rights, they and their representatives are essential to a republican form of government * * *".

The California high court in *Katz v. Fitzgerald*, 52 Cal. 433, 93 P. 112, (1907) said:

> "By virtue of the constitutional provisions, the state has seen fit to declare that political parties shall be as to their mode of holding conventions and nominating candidates for public office, regarded as public

bodies whose methods are to be controlled by the "state."

To like effect the United States Court of Appeals in *Rice v. Elmore*, 165 F. 2d 387, 68 S. Ct. 905, 333 U.S. 875 (1947) in answer to the question as to whether a political party was a private body said:

> "The fundamental error in defendant's position consists in the premise that a political party is a mere private aggregation of individuals, like a country club, and that the primary is a mere piece of party machinery, * * * political parties have become in effect state institutions, governmental agencies through which sovereign power is exercised by the people."

As the above citations indicate, the law since *Smith v. Allwright*, has been developing to the stage where state courts are looking on political parties as agencies of the state with increasing consistency. However, the State of Michigan through its Court of Appeals has refused to apply the philosophy of the highest court in the land by saying that:

> "Nothing that was said in the case can be regarded as determining the status of a political party for purposes of assessment under state employment security acts."

The Court seems to say that a political party is an agency of the state for civil rights purposes only. It is our proposition that if political parties are agencies of the state for civil rights purposes, they are agencies of the state for taxation purposes.

CONCLUSION

To protect the integrity of this Court's *Smith v. Allwright* decision, to ensure equal protection under the law, and to further delineate and clarify the status of stat-

utorily created and regulated political parties before the law, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

PAUL A. WARD
Attorney for Petitioner

Business Address:
865 Union Bank Building
Grand Rapids, Michigan 49502

Of Counsel:

RUSSELL & WARD

Business Address:
865 Union Bank Building
Grand Rapids, Michigan 49502

Footnote

[1] The Michigan Election Law makes the Republican Party an integral part of the electoral process. We refer to the Michigan Election Law as follows: (the numbers refer to sections of the law). The Election Law of the State of Michigan provides in even numbered years, for state conventions of all political parties, "for the nomination of candidates for state offices, to be held not less than sixty-six (66) days before the general November election." 591. It prescribes the time and place for holding county conventions for the election of delegates to state conventions, and directs that the State Central Committee shall designate the time and place for holding county conventions. After election of delegates, their names are certified to the State Central Committee and when so certified, they become delegates to the convention. 592. It provides for state conventions in odd-numbered years for the nomination of candidates for state offices and states the procedures for serving a copy of the call for the state convention on the county chairman and a copy of such call must immediately be filed with the Secretary of State. 593.

(Footnote continued)—

It provides for holding of county conventions in odd-numbered years for the election of delegates for the state convention. 594. It provides for the apportionment of the county by the county committee of the delegates to be elected to the state convention and the election of such delegates by townships, wards, precincts, or districts to which they have been apportioned. 595. It provides for the selection of the State Central Committee, to select a chairman, vice-chairman and to appoint a secretary and treasurer, and such other officers as in its judgment may be proper.

The term of the office of the State Central Committee is to continue until the selection of a successor. 597. It covers the procedure for the State Central Committee to forward to the county committee the call for the fall state convention, etc. 598. It provides that candidates for political office of each political party in each county shall, every second year, meet within ten (10) days after their nomination at a time and place to be fixed by the then chairman of the county committee and select a county committee for each party consisting of not less than two members from each township and ward of a city having a population greater than three hundred thousand (300,000) or two members from each election precinct in the county as said candidates shall determine at said meeting. The candidates shall also select a chairman and vice-chairman, secretary and treasurer for such committee. 599.

At the fall congressional election provided for in the act, "there shall also be elected for each political party, a district chairman, secretary and treasurer, and committee of fifteen members to serve for two years or until successors are elected and qualified." 600. It gives county committees where district comprises more than one county, power to name members of district committee and in congressional district, giving the congressional candidate the power to select members of congressional committee. 603. It details the functioning of the county committee with respect to the election of delegates at the August primary. 604. It details the procedure by which candidates or delegates to the county convention have their names placed on the ballots at the primary election, are notified of their

(Footnote continued)—

election, and declared to be elected by the board of primary election inspectors and are certified as elective delegates to the county clerk and to the chairman of the county committee. 605, 606 and 607. It provides that delegates may not give proxies, but that vacancies occurring in any delegation to any convention shall be filled by a majority vote of such delegation. 609.

It provides for the selection by delegates to the national convention of a national committeeman and a national committeewoman for such state. 610. It provides that in the year of 1956 and each fourth year thereafter, delegates of each political party who were elected to the last prior fall county convention shall reconvene in a county convention. Such county conventions shall, when so convened, elect delegates to a state convention. The number of delegates so elected shall be the same as the number elected to the last spring state convention and said county convention shall be held at least ninety (90) days prior to the time set for the holding of the national convention of its political party.

This same section of the statute also provides for a state convention to be held in the year 1956 and each fourth year thereafter composed of delegates so elected by the respective county conventions which shall be held at least sixty (60) days prior to the holding of the national convention of its political party. At this convention, the delegates are required to convene in caucus in congressional districts and the delegates of each congressional district shall elect two district delegates to the national convention of its political party, and shall report to the state convention, the names of the delegates so elected at each congressional caucus. The section further provides that the state convention shall convene and shall elect the balance of the delegates to the national convention of its political party to which it is entitled under the call of the national convention as delegates at large. The convention is also required to elect presidential electors in the manner provided by law. The delegates chosen by the respective congressional districts and reported to the convention, and delegates at large elected at the state convention, are certified as the state delegation of such politi-

(Footnote continued)—

cal party to its national convention by the chairman and secretary of the state convention.

In addition to the foregoing sections of the Michigan Election Law, the Republican Party is made an agency and instrumentality of the state with respect to apportionment.

Section 6 of Article IV of the Constitution of 1963, requires that the Republican Party function as a part of the machinery for the apportionment of the Legislature. That section states, "a commission on legislative apportionment is hereby established consisting of eight electors, four of whom shall be selected by the state organizations of each of the two political parties whose candidates for governor received the highest vote at the last election at which a governor was elected preceding each appointment." And, Act No. 261 of the Public Acts of 1966 made the two political parties receiving the greatest number of votes cast for the office of the Secretary of State in the last election an integral part of the county apportionment commissions.

APPENDIX A

CIRCUIT COURT

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

In the Matter of the Appeal of the
Fifth District Republican Committee — No. 5782

Vander Ploeg, J.

May 6, 1968

OPINION OF THE COURT

The Fifth District Republican Committee is the legally constituted Republican District Committee for the Fifth Congressional District of this state as provided for in Section 600 of the Michigan Election Law.

Said Fifth District Republican Committee had at the time of institution of action by the Michigan Employment Security Commission, several employees who were paid a salary.

On June 3, 1966, an examiner of the Michigan Employment Security Commission determined that the Fifth District Republican Committee was an organization covered by Section 41(E) of the Michigan Employment Security Act, and on July 3, 1966, a redetermination affirming the prior determination was made, and that on July 20, 1966, the Fifth District Republican Committee appealed the determination and a hearing was held on October 11, 1966.

before a referee. The decision of the referee was to reaffirm the redetermination, and on December 13, 1966, appeal was made to the Appeal Board of the Michigan Employment Security Commission which again reaffirmed the decision of the referee.

The salaried employees of the Fifth District Republican Committee perform work for said Committee in connection with its statutory function.

The State of Michigan, under its Election Law, being Public Act 116 of the Public Acts of 1954, as amended, integrates the political parties into the electoral process in this state. The statute referred to makes provisions for nomination of candidates for state offices at state party conventions, prescribed the manner of holding congressional district and county conventions for the election of delegates to state and national conventions, gives direction to the State Central Committee of the party as to the holding of these conventions, makes provision for the certification of nomination of candidates by the state convention so that their names may appear on the fall general election ballot, requires the serving of a call for the state convention with the Secretary of the State of Michigan, provides a method of apportionment of delegates to state conventions by the county convention, provides a method of election of a State Central Committee and the selection of a chairman of the State Central Committee and its other officers, and the Statute also covers procedures for calling state conventions, filling vacancies after their nomination, details the functioning of various committees as well as the procedure whereby candidates have their names placed on the ballot at a primary election, provides the election of party precinct delegates to the county convention on a state ballot and provides for certification of such election by the county clerk to the chairman of the county committee, provides that delegates may not act by proxy, provides for the selection of delegates to a national political convention, the selection of national committee members and the choosing of presidental electors by district party caucuses.

The statutes and the Constitution of the State of Michigan otherwise integrate political parties into the elective

structure. The constitution provides a commission of legislative apportionment selected by the state organizations of each of the two major political parties and makes the officers of political parties an integral part of the county apportionment commissions.

The facts as recited above are sufficient to show that several organic functions of state government, particularly in the apportionment of the Legislature and the election of several important state wide offices cannot be performed without the active participation of the statutorily constituted political organization such as the Republican Party.

In this matter, it is the claim of the Michigan Employment Security Commission that the Fifth District Republican Committee is an employer subject to the Michigan Employment Security Act because under Section 40, an employing unit is defined as:

> "Any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to this amendatory act, had in its employ 1 or more individuals performing services for it within this state."

Section 41(1)(b) of the Act defines employer as "any employing unit" which has a requisite number of employees for a requisite period of time.

It is the claim of the Fifth District Republican Committee that it is not subject to the Act by reason of the fact that it is an agency of the state. Counsel for neither party has been able to furnish the Court with any Michigan cases defining the exact legal nature of a political party, and the Court has failed to find any such definition of what the legal status of a political party is in either case law or the statutes of this state. There are many early cases in other jurisdictions which have stated that a political party is merely a voluntary association of in-

dividuals, and this was apparently the common law rule. However, more recent cases have indicated that the nature of a political party has been changed as our political institutions have developed and have become more sophisticated and regulated by legislative enactment, and as more duties have been assigned to political parties by statute, the courts have come to recognize political parties as a part of government.

> "To the objection that it makes a public body of that which is, in its essence, a private association of citizens to accomplish a public purpose, it is sufficient to say that the conception that a political party is hereby a private association of citizens, a conception which in the past found wide acceptance, has, under the development of modern political parties, been very generally abandoned, and, where not abandoned, the conception itself has been destroyed, as in this state by force of the Constitution and the statutory laws enacted under it. By virtue of the constitutional provision the state has seen fit to declare that political parties shall be as to their mode of holding conventions and nominating candidates for public officer, regarded as public bodies whose methods are to be controlled by the state." See *Katz v. Fitzgerald*, (1907) 152 Cal. 433, 93 P 112.

The test to be applied in determining whether a political party has become a public body or agency of the state was decided by the Supreme Court of the United States in *Smith v. Allwright*, (1944) 321 U.S. 649, 64 S. Ct. 757, 88 L. Ed. 987. In this case, the Supreme Court found under a statutory system of party regulations which, while in some respects differs from the Michigan Election Law, in general provides an equally comprehensive system of party regulations stating as follows:

> "We think that this statutory system for the selection of party nominees for inclusion on the general election ballot makes the party which is required to follow these legislative directions an agency of the

> State insofar as it determines the participants in a primary election. The party takes its character as a state agency from the duties imposed upon it by state statutes; the duties do not become matters of private law because they are performed by a political party."

Since the decision of *Smith v. Allwright*, supra, several other jurisdictions have cited it as authority for overturning long established rules that treat political parties as voluntary associations. For instance, in *Bentman v. Seventh Ward Democratic Executive Committee*, (1966) 421 Pa. 188, 218 A. 2d 261, the Supreme Court of Pennsylvania said as follows:

> "The reluctance of courts in the past to interfere in and to entertain litigation dealing with the internal organization or management of any private entity and the philosophy underlying *Kearns*, *Kenneck* and *Koontz* is understandable. Today, however, the relationship between political parties, the government and the public has become such that, in many areas, the public interest is not only *directly* affected by political parties but such parties actually perform *public* functions imposed upon them by law. 'Insofar as a political party performs statutorily-imposed public functions and to the extent that its actions constitute state action, the internal organization of a political party directly affects its performance of such public function then not only *may* the judiciary intervene but it *must* intervene.'
>
> In our Commonwealth, the legislature has seen fit to impose upon political party organizations the performance of certain public functions which directly affect the public and our government. Such fact, considered in connection with the extension in recent years of the concept of 'state action' under the 14th Amendment, has brought about a change of judicial thinking in this area of the law. Judicial interference, even with the internal organization of a political party, is justifiable if such internal organization may directly affect the performance of a public function and

the public interest. The invocation of a judicial interference in this area must be restricted or circumscribed; judicial intervention must be limited to controversies where the issue raised bears a *direct* and *substantial* relationship to the performance of *public* functions by the political party.

The statutory addition to the Election Code effective in 1947 clearly gave recognition to the legal status of party committeemen and political committees the lack of which up to that time had been questioned by our courts. However, appellees submit that, under the wording of the statute and even assuming the recognition of the legal status of party committeemen, the Executive Committee is expressly given the 'control, direction and supervision' of the party committeemen and such 'control, direction and supervision' embraces a right of the Executive Committee to remove committeemen from office and to appoint others in their stead."

To like effect is *Rice v. Elmore*, (1947) 165 F. 2d 387 (Certiorari denied, 333 U.S. 875, 68 S. Ct. 905) stating:

"The fundamental error in defendant's position consists in the premise that a political party is a mere private aggregation of individuals, like a country club, and that the primary is a mere piece of party machinery. The party may, indeed, have been a mere private aggregation of individuals in the early days of the Republic; but with the passage of the years, political parties have become in effect state institutions, governmental agencies through which sovereign power is exercised by the people."

Also, in our neighboring State of Indiana, the Supreme Court saw fit to overrule a prior decision in *States ex. rel. Butts v. Marion Circuit Court* (1947) 225 Ind. 7, 72 N.E. 2d 225, 170 A.L.R. 187, on the basis of *Smith v. Allwright*, supra, stating:

"Political parties through conventions and primary elections, regulated by state statutes, select our candi-

dates for the most important public offices, and in so doing are acting as state agencies and not as voluntary associations. *Smith v. Allwright*, (1944) 321 U.S. 649, 64 S. Ct. 757, 88 L. Ed. 987, 151 A.L.R. 1110. In exercising their political rights they and their representatives are essential to a republican form of government."

Therefore, it is the opinion of this Court that because of the fact that the Fifth District Republican Committee has been recognized by the Michigan Election Law as an integral part of the election machinery of this state and a substantial amount of state authority has been delegated to such political party in determining nominees and the conducting of the electoral process, the Fifth District Republican Committee is an agency of the State of Michigan.

The next question is: Is the Fifth District Republican Committee as an agency of the State of Michigan exempt from the provisions of the Michigan Employment Security Act even though its employees are not subject to civil service or paid by state funds?

The Michigan Employment Security Commission argues that the exemption applies to services performed in the service of the state. The fact that the employees of the Fifth District Republican Committee are paid out of committee funds and not by the state does not affect the status of the Committee as an agency and instrumentality of the state. The Attorney General has ruled in the case of the Mackinac Bridge Authority which is a public corporation existing independently from the state, that its employees can be included in the State Retirement Fund since the Retirement Act includes any state employees who are not included in the State Civil Service system. A reading of the statute indicates that the test to be applied under the Michigan Employment Security Act is not the status of the employees, but the status of the employer. If the employer is exempt, his employees are not under the Act. Therefore, the Fifth District Republican Committee is not an employer or employing unit within the meaning of the Act.

Judgment may be entered for the Fifth District Republican Committee in accordance with this Opinion.

Claude Vander Ploeg
Circuit Court

Dated May 6, 1968
at Grand Rapids, Michigan.

APPELLATE COURT

19 Mich. App. 449.

FIFTH DISTRICT REPUBLICAN COMMITTEE,
Plaintiff-Appellee,

v.

MICHIGAN EMPLOYMENT SECURITY COMMISSION, Defendant-Appellant.

Docket No. 5653.

Court of Appeals of Michigan

Div. 3.

Oct. 2, 1969

* * *

J. H. GILLIS, Presiding Judge.

This is an appeal from a judgment of the Kent county circuit court reversing an administrative determination of liability for contributions under the Michigan Employment Security Act.[1] The question presented is whether the district committee of a political party is exempt from assessment under the act.

---

[1] C.L.1948, § 421.1 et seq. as amended (Stat.Ann.1960 Rev. and 1969 Cum.Supp. § 17.501 et seq.).

Plaintiff is the legally constituted Republican district committee for the fifth congressional district of this state. It claims exemption from the taxing provisions of the Michigan employment security act on two grounds. First, plaintiff contends that it is not an "employing unit" within the meaning of § 40 of the act (M.C.L.A. § 421.40 [Stat. Ann. 1968 Rev. § 17.5421]). Second, conceding *arguendo* that a political party is an "employing unit," plaintiff contends that it is nevertheless exempt as an agent of this state under § 42 subd. (7) (a) of the act (C.L.S.1961, § 421.42 subd. (7) (a) [Stat.Ann.1965 Cum.Supp. § 17.545 subd. (7) (a)]).

During the calendar year involved, 1965, § 41 subd. (1) (b) of the act (C.L.S.1961, § 421.41 subd. (1) (b) [Stat. Ann.1963 Cum.Supp. § 17.543 subd. (1) (b)]) defined in pertinent part those employers subject to the act as:

> "*Any employing unit* which in each of 20 different weeks within the calendar year 1956 or within any succeeding calendar year (whether or not such weeks are or were consecutive) has or had *in employment* 4 or more individuals." (Our emphasis.)

We have italicized only those statutory prerequisites which are here in dispute. It is conceded that during the year involved plaintiff paid four or more individuals to perform services for it.

An "employing unit" is defined as follows:

> "'Employing unit' means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to this amendatory act, had in its employ 1 or more individuals performing services for it within this state."

Plaintiff's initial argument is that the word "including" is a word of limitation and not of enlargement. Because a political party is nowhere specifically mentioned, we

are urged to conclude that plaintiff is not an employing unit. We disagree.

[1-4] In Godsol v. Unemployment Compensation Commission (1942), 302 Mich. 652, it was stated, p. 665, 5 N.W. 2d 519, p. 524, 142 A.L.R. 910:

> "The purpose of the unemployment compensation act is to relieve the distress of economic insecurity due to unemployment. It was enacted in the interest of public welfare to provide for assistance to the unemployed *and as such is entitled to a liberal interpretation.*" (Emphasis supplied.)

A liberal interpretation requires that we view with caution any construction of the act which would narrow its coverage and deprive persons entitled thereto of the benefits of the act. Copper Range Company v. Michigan Unemployment Compensation Commission (1948), 320 Mich. 460, 31 N.W. 2d 692. When the entire act is read and all its provisions are construed together, it is evident that the clause "any individual or type of organization" in § 40 is all inclusive in its scope and that a political party is embraced within that broad definition. Cf. Carter v. Division of Water, City of Youngstown (1946), 146 Ohio St. 203, 65 N.E.2d 63.

It is to be observed that some types of organizations, a charity for example, are exempt from contributions under the act. However, freedom from assessment is not because of the fact that § 40 fails specifically to mention a charity as an employing unit. The exemption derives from a provision of § 42 subd. (7) of the act (C.L.S. 1961, § 421.42 subd. (7) [Stat.Ann.1965 Cum.Supp. § 17.545 subd. (7)]) which specifically exempts from coverage service performed in the employ of a charity. While § 42 subd. (7) excludes many kinds of labor from coverage, service in the employ of a political party is not so excluded. Adoption of the narrow construction of "employing unit" urged by plaintiff would, in effect, result in conferring immunity upon a type of organization not otherwise exempt. We refuse to deprive plaintiff's employees, individuals whose labor is not specifically excluded from coverage under the act, of

the act's protection. "[C]ourts are without power to deprive those entitled thereto of the benefits of the act, unless they are expressly precluded therefrom by its provisions." Copper Range v. Michigan Unemployment Compensation Commission, supra, 320 Mich. p. 470, 31 N.W.2d p. 696.

The second disputed prerequisite is that those performing services for plaintiff be "in employment." By § 42 subd. (7) (a) of the act, "employment" does not include "service performed in the employ of this state." It is plaintiff's second contention that individuals performing services for it are in the employ of the state of Michigan. The argument rests upon the premise that plaintiff, as a political party, is an agent of this state.

Plaintiff relies upon Smith v. Allwright (1944), 321 U.S. 649, 64 S.Ct. 757, 88 L.Ed. 987. It was there held that, where a state legislature entrusts to a political party the selection of candidates for public office at a primary election, a political party in making those selections is an agency of the state; and, as a state agent, a political party is constitutionally precluded from excluding negroes from voting in primary elections. The following language is cited:

> "We think that this statutory system for the selection of party nominees for inclusion on the general election ballot makes the party which is required to follow these legislative directions *an agency of the state in so far as it determines the participants in a primary election.*" 321 U.S. at 663, 64 S.Ct. at 765. (Emphasis supplied.)

We are thus confronted with a syllogism. Its major premise is that state agents by virtue of § 42 subd. (7) (a) of the act are exempt from assessment. The declaration in Smith v. Allwright, *supra*, that political parties are state agents provides the minor premise. Plaintiff concludes that it is exempt from contributions under the employment security act.

[5] Plaintiff's argument reminds us of the words of Mr. Justice Frankfurter: "The syllogism is perfect. But this is a bit of verbal logic from which the meaning of things

has evaporated." Phelps Dodge Corp. v. National Labor Relations Board (1940), 313 U.S. 177, 191, 61 S.Ct. 845, 851, 85 L.Ed. 1271, 1281. In the first place, the definition of a political party as a state agent in Smith v. Allwright, *supra*, was for purposes of constitutional law. Nothing that was said in that case can be regarded as determining the status of a political party for the purpose of assessment under a state employment security act. Plaintiff insists, however, that, if a political party is a state agent for purposes of constitutional law, it is also a state agent for purposes of tax exemption. An analogous claim was considered in Gundry, Auditor General v. R. B. Smith Memorial Hospital Association (1940), 293 Mich. 36, 291 N.W. 213. A hospital sought a tax exemption as a charitable organization. Hospitals had previously been defined by the Michigan Supreme Court as charitable institutions. Again, the syllogism was perfect. However, the court noted:

> "The question of when a hospital is a charitable organization has been presented in Downes v. Harper Hospital, 101 Mich. 555, 60 N.W. 42, 25 L.R.A. 602, 45 Am.St.Rep. 427; Pepke v. Grace Hospital, 130 Mich. 493, 90 N.W. 278; Bruce v. Ford Hospital, 254 Mich. 394, 236 N.W. 813. *It must be noted, however, that in those cases the definition of a charitable institution was for the purposes of tort law and is not conclusive in a tax exemption case as tax exemptions are to be strictly construed.*" 293 Mich. at 39, 291 N.W. at 214 (Emphasis supplied.)

This Court itself has had occasion to remark:

> "The precise situation before us is that we are concerned with a definition under a Federal act and under a different State act dealing with a different matter." Standard Automotive Parts Company v. Michigan Employment Security Commission (1966), 3 Mich. App. 561, 571, 143 N.W.2d 135, 139.

In this case, plaintiff's constitutional status is not our

concern. We deal with a different matter. Smith v. Allwright, *supra*, is not in point.

Although § 42 subd. (7) (a) is designed to exempt governmental instrumentalities from assessment under the employment security act, the tests to be applied in resolving an issue of state agency for purposes of tax exemption are not altogether clear. Several cases, however, have considered the indicia of state agency for purposes of exemption. In State Bar of Michigan v. Lansing (1960), 361 Mich. 185, 105 N.W.2d 131, it was held that property of the State Bar was exempt from taxation. The decision rested upon the ground that the State Bar was for purposes of taxation an agent of the state and therefore exempt under general law. It was noted that the State Bar was specifically *created* by legislative enactment. Other courts have also emphasized creation by legislative enactment of the instrumentality claiming exemption. See In re Batter (1939), 257 App.Div. 546, 14 N.Y.S.2d 42; Pickett v. Unemployment Compensation Board of Review (1955), 177 Pa.Super. 240, 110 A.2d 863.

The degree of control exercised by the state over the organization claiming exemption is also relevant. In resolving the tax status of the Michigan bar, the Court noted:

> "[I]ntegrated bars have the common characteristic of being organized by the state or under the direction of the state, *and of being under its direct control*, and in effect they are governmental bodies." State Bar of Michigan v. Lansing, *supra*, 361 Mich. p. 197, 105 NW2d p. 137, quoting Lathrop v. Donohue (1960), 10 Wis.2d 230, 102 N.W.2d 404 (quoting 114 A.L.R. 161). (Emphasis supplied.)

In National Campaign Committee v. Rogan (S.D.Cal., 1945), 69 F.Supp. 679, the court construed a provision of the Social Security Act which exempted "service performed in the employ of a state." It was said, p. 685:

> "Furthermore, the [provision] of the Social Security Act indicates that for the exemption to attach there must be employment, that is control by the state in the relation of employer and employee; that is to say,

there must be employment before the exemption attaches; but there is clearly no control or direction even in the slightest degree by the State of California or any of its officers, agencies, or functionaries of any kind of the plaintiffs here, and I must conclude on that point against the plaintiffs."

[6] The circuit court below was of the opinion that "the fact that the employees of the Fifth District Republican Committee are paid out of committee funds and not by the state, does not affect the status of the committee as an agency and instrumentality of the state." Likewise, the circuit judge viewed as irrelevant the fact that plaintiff's employees are not subject to civil service. This was error. Together with the indicia of state creation and control, such circumstances are to be considered in resolving an issue of state agency for purposes of exemption under the employment security act. *Cf* State, ex rel. Merion, v. Unemployment Compensation Board of Review (1944), 142 Ohio St. 628, 53 N.E.2d 818.

[7] We hold as a matter of law that plaintiff is not exempt from assessment under the Michigan Employment Security Act. The Fifth District Republican Committee is not the creation of our state legislature. The state exercises no direct control over its affairs. Although it is true that plaintiff is subject to regulation under this state's election laws, that regulation, without more, does not entitle plaintiff to exemption from contributions under the act. Plaintiff's employees are not subject to the state's control, nor are they paid by the state. All these circumstances combined negate plaintiff's claim.

Finally, it should be reiterated that the legislature did not see fit to exempt service in the employ of a political party from coverage under the act. We reject a construction of "service in the employ of this state" which would grant plaintiff an immunity from assessment. Had the legislature intended that this provision be given the construction contended for on behalf of plaintiff, we have no doubt that specific and unequivocal language would have been used to accomplish that end.

Reversed. No costs, a public question being involved.

APPENDIX B

Amend. 14, § 1 CONSTITUTION OF UNITED STATES

AMENDMENT XIV.

§ 1. Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws:

* * *

Constitution of the State of Michigan of 1963

Art. 4, § 6

* * *

§ 6. Commission on legislative apportionment

Sec. 6. A commission on legislative apportionment is hereby established consisting of eight electors, four of whom shall be selected by the state organizations of each of the two political parties whose candidates for governor received the highest vote at the last general election at which a governor was elected preceding each apportionment. If a candidate for governor of a third political party has received at such election more than 25 per cent of such

gubernatorial vote, the commission shall consist of 12 members, four of whom shall be selected by the state organization of the third political party. One resident of each of the following four regions shall be selected by each political party organization: (1) the upper peninsula; (2) the northern part of the lower peninsula, north of a line drawn along the northern boundaries of the counties of Bay, Midland, Isabella, Mecosta, Newaygo and Oceana; (3) southwestern Michigan, those counties south of region (2) and west of a line drawn along the western boundaries of the counties of Bay, Saginaw, Shiawassee, Ingham, Jackson and Hillsdale; (4) southeastern Michigan, the remaining counties of the state.

* * *

---

28 USC § 1257

§ 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or com-

mission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

* * *

---

42 US 1983

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the parties injured in an action at law, suit in equity, or other proper proceeding for redress.
R.S. § 1979.

* * *

CL 1948 Sec 168.600

168.600 Congressional district convention of political party: officers, election, term

Sec. 600. At the 1964 fall congressional district convention provided for in this act for congressional districts, the majority of the electors of which, reside in counties having a population of over 1,000,000, and at a caucus of each congressional district held at the time of the 1964 fall state convention, there shall also be elected for each political party a congressional district chairman, vice chairman of opposite sex from the chairman, secretary, treas-

urer and committee of 15 members to serve for 2-year terms or until their successors are duly elected and qualified. Thereafter beginning in 1967 such elections shall be held at the spring congressional district conventions and the caucuses held at the time of the spring state convention in every odd-numbered year. P.A.1954, No. 116; § 600, Eff. June 1, 1955, as amended P.A.1964, No. 279, §1, Imd. Eff. June 11.

* * *

APPORTIONMENT OF BOARDS OF SUPERVISORS

P.A. 1966. No. 261

AN ACT to provide for the apportionment of county boards of *commissioners;* to prescribe the size of the board; to provide for appeals; to prescribe the manner of election of the members of the county board of *commissioners;* to provide for compensation of members; and to repeal certain acts and parts of acts. Amended by P.A.1968, No. 153, §1, Imd. Eff. June 13 P.A.1969, No. 137, § 1, Eff. March 20, 1970.

46.401 Apportionment of county into county supervisor districts

Sec. 1 * * * Within 60 days after the publication of the latest United States official decennial census figures, the county apportionment commission in each county of this state shall apportion the county into not less than 5 nor more than 35 county *commissioner* districts as nearly of equal population as is practicable and within the limitations of section 2. In counties under 75,000, upon the effective date of this act, the boards of *commissioners* of such counties shall have not to exceed 30 days into which to apportion their county into *commissioner* districts in accordance with the provisions of this act. If at the ex-

piration of the time as set forth in this section a board of *commissioners* has not so apportioned itself, the county apportionment *commission* shall proceed to apportion the county under the provisions of this act. * * *

* * *

421.38 Review of questions

Sec. 38. *The circuit court of the county in which the claimant resides, or, if claimant is a party to the case:* * * * the circuit court of the county * * * which the employer's principal place of business in Michigan is located, * * * *in any case* the circuit court for the county of Ingham, shall have power to review questions of fact and law on the record made before the referee and the appeal board involved in any such final *order or* decision *of said appeal board, and to make such further orders in respect thereto as justice may require,* but said court may reverse such *order or decision* * * * *only if it finds that such order or decision is contrary to law or is not supported by competent, material and substantial evidence on the whole record.* * * * Application *for such review must be* made within 15 days after mailing of a copy of *the order or* decision * * * by any method permissible under the rules and practices of the circuit courts of this state. * * * The commission shall be deemed to be a party to any judicial action involving any *order or* decision *of the appeal board.* An appeal may be had from the decision of said circuit court in the same manner as provided by the laws of this state with respect to appeals from circuit courts.

As amended P.A.1967, No. 254, § 1, Imd. Eff. July 19.

* * *

421.40 Same: employing unit

Sec. 40. "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to this amendatory act, had in its employ 1 or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains 2 or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work. As amended P.A. 1954, No. 197, § 1, Imd. Eff. May 7; P.A.1955, No. 281, § 1, Eff. July 15.

* * *

421.41 Same: employer

Sec. 41. "Employer" means: (1) (a) * * * Any employing unit which in each of 20 different weeks within the calendar year *1956 or within any succeeding calendar year through 1968*, whether or not such weeks are or were consecutive, has or had in employment *4* or more individuals, not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week.

(b) * * * Beginning January 1, 1966, *and until subsection (c) is applicable,* an employing unit (i) which in the preceding calendar year had in each of 20 different weeks, whether or not such weeks were consecutive, in employment 1 or more individuals irrespective of whether the same individual was employed in each such week, or (ii) by which total remuneration of $1,000.00 or more for employment was paid or payable within the preceding calendar year.

(c) *Beginning January 1, 1969, an employing unit (i) which in each of 20 different calendar weeks within a calendar year, whether or not such weeks were consecutive, has or had in employment 1 or more individuals irrespective of whether the same individual was employed in each such week, or (ii) by which total remuneration of $1,000.00 or more for employment was paid or payable within the calendar year.*

(d) For the purposes of paragraphs (a), (b) and (c) of this subsection, a week which falls in 2 calendar years shall be deemed to fall entirely within that calendar year which contains the majority of days of such week.

(2) Any individual, legal entity or employing unit which acquired the organization, trade or business, or 75% or more of the assets thereof, of another which at the time of such acquisition was an employer subject to this act;

(3) Any employing unit which having become an employer under paragraphs (1), (2), (4) or (5) hereof, has not, under sections 24 and 25 of this act, ceased to be an employer subject to this act; or

(4) For the effective period of its election pursuant to section 25, any other employing unit which has elected to become fully subject to this act;

(5) Any employing unit not an employer by reason of any other paragraph of this section for which services in employment are performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund; but services performed for such employing unit shall constitute employment for the purposes of this act only to the extent

that such services constitute employment with respect to which such federal tax is payable.
As amended P.A.1968, No. 338, § 1, Imd. Eff. July 19.

* * *

421.42 **Employment: construction; exceptions**

Definitions; employment, contract of hire

Sec. 42. (1) Subject to the other provisions of this section "employment" means service, including service in interstate commerce, performed for remuneration or under any contract of hire, written or oral, express or implied.

Service within and without this state

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

(a) The service is localized in this state; or

(b) The service is not localized in any state but some of the service performed in this state and (1) the base of operations, or, if there is no base of operations then the place from which such service is directed or controlled, is in this state; or (2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state; or

(c) After December 31, 1964, the service is not localized in any state but is performed by an employee on or in connection with an American aircraft, if either the contract of service is entered into within this state or if the contract of service is not entered into within this state or within any other state and during the performance of the contract of service and while the employee is employed on the aircraft, it touches at an airfield in this state, and

the employee is employed on and in connection with such aircraft when outside the United States. The commission may enter into reciprocal agreements with other states with respect to such aircraft which touch airfields in more than 1 state.

Service within this state not otherwise covered or excluded

(3) Service performed within this state but not covered under the provisions of subsection (2) of this section and not excluded under the provisions of subsection (8) of this section shall be deemed to be employment subject to this act if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or of the federal government.

* * *

Service not included

(7) Except as otherwise provided in subsection (8) of this section the term "employment" shall not include:

State or political subdivision

(a) Service performed in the employ of this state, or any political subdivision thereof, except as otherwise provided in section 19a; . . . As amended P.A. 1967, No. 192, § 1, Imd. Eff. June 30; P.A. 1968, No. 338, § 1, Imd. Eff. July 19.

* * *